137

(2)

No. 09-52

Supreme Court, U.S.
FILED
AUG 12 2009
OFFICE OF THE CLERK

In The

Supreme Court of the United States

SHAWN MICHAEL SKROPITS,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION

JOHN D. FERRERO,
Prosecuting Attorney,
Stark County, Ohio

RONALD MARK CALDWELL*
Assistant Prosecuting Attorney
110 Central Plaza, South
Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

**Counsel of Record*

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

STATEMENT OF THE CASE 1

ARGUMENT 12

CONCLUSION 18

TABLE OF AUTHORITIES

CASES

State v. Jones, 117 Ohio St.3d 1438, 883 N.E.2d 456 (2008) 9

State v. Jones, 121 Ohio St.3d 103, 902 N.E.2d 464 (2009) 9, 13

State v. Skropits, 117 Ohio St.3d 1423, 882 N.E.2d 444 (2008) 9

State v. Skropits, 117 Ohio St.3d 1450, 883 N.E.2d 1075 (2008) 9

State v. Weideman, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002) 8, 12, 13, 16, 17

Terry v. Ohio, 392 U.S. 1 (1968) 5

Virginia v. Moore, ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008) 9, 12, 13, 14, 17

CONSTITUTION

U.S. Const. Amend. IV ..... *passim*

STATEMENT OF THE CASE

In 2006, the Stark County Grand Jury returned an indictment charging Adam David Jones and Shawn Michael Skropits each with one count of carrying concealed weapons[1] and unlawful possession of a dangerous ordnance.[2] The indictment charged both Jones and Skropits as either the principal offender or as accomplices who aided and abetted each other. The men were charged with having four handguns and a sawed-off shotgun in their Ford Ranger, along with ammunition for the guns, when they were stopped after a traffic accident. Jones was the driver of the vehicle and Skropits was his passenger. Both men pleaded not guilty to these charges, and the case proceeded in the Stark County Court of Common Pleas.

Before trial, Skropits and Jones filed separate motions to suppress the evidence against them, arguing that the officer stopped them outside of his jurisdiction, and thus the stop was illegal. At the conclusion of the evidentiary portion of the hearing, the trial court determined what the parties agreed to with regard to the facts in this case. The parties agreed that it was dark at the time of the stop, that the police officer who made the stop was on his way back into his jurisdiction at the time he saw the vehicle Jones and Skropits were in, and that their

---

[1] R.C. 2923.12(A)(2), a felony of the fourth degree.

[2] R.C. 2923.17(A), a felony of the fifth degree.

vehicle had damage to the grill and was operating without its headlights on.[3] The trial court asked defense counsel whether the officer had the legal right to stop such a vehicle under these conditions.

> THE COURT: . . . Under your view of this case, if he's outside of his jurisdiction, he's going back towards his jurisdiction, he sees the vehicle after dark, when, when the vehicle should have headlights on, doesn't have headlights on, it has a smashed grill, he can't stop it, he just has to let it go?
>
> MR. REISCH [JONES' ATTORNEY]: No, he should stop it, but then this Court should suppress it because he shouldn't be outside his jurisdiction. Yes.
>
> . . .
>
> THE COURT: Mr. Urban, at this point in time would you say this case stands for the proposition that the officer should let the vehicle go?
>
> I'm trying to –

---

[3] T.(S) 58-61. The record on appeal for this case consists of two volumes of transcripts – one for the suppression hearing, and one for the sentencing hearing. Skropits did not include a transcript of the no contest plea hearing. In the appeal of his co-defendant, Adam David Jones, only the transcript of the no contest plea hearing was transmitted as part of the record in his appeal. References to the transcript of the suppression hearing in this brief will be "T.(S)."

> MR. URBAN [SKROPITS' ATTORNEY]: I don't, I don't think it should stand for that proposition and I agree with what Mr. Reisch had indicated.
>
> T.(S) 62.

The trial court attempted to clarify this apparently contradictory position taken by both Jones and Skropits, i.e., that the officer had the legal authority to stop their vehicle, but also did not have this authority since he was outside of his jurisdiction at the time he saw their vehicle and stopped it.

> THE COURT: So you all are saying since he went further in doing something about this investigation than he should have, then if he sees something on his way back that he could otherwise stop someone for, he can't stop them?
>
> MR. REISCH [for JONES]: No, I think, as I said before, he should be able to stop the vehicle for, certainly for public safety, but then it's up to the Court to review whether that evidence should be suppressed, because he, there was no crime that took him outside.
>
> . . . Right. He should, taken as a snapshot in that moment of time, yes, he should have stopped the vehicle.
>
> T.(S) 64-65.[4]

---

[4] Counsel for Skropits seemed to diverge from this position, arguing that the officer did not have authority to be outside of

(Continued on following page)

The trial court further questioned counsel, setting forth the facts that seemed to be undisputed at the hearing, focusing on the issue of whether the officer had authority to go outside of his jurisdiction as part of his investigation into a hit-skip accident within his jurisdiction.

> THE COURT: . . . But what we have here, for the sake of this argument, discussion, is that we have a police officer who was told about an incident that occurred and some type of incident between two vehicles that occurred within his jurisdiction, he went there, . . . , he cleaned the place up. He took the remedial action that he was supposed to take, kicked things off the road, get them off the side, looked around, didn't see anything.
>
> Went back to the city hall, was getting ready to go into the city hall to perform his other duties, which he enumerated for us, doesn't even get out, fully into his car – out of his car into the city hall, was radioed, told to go outside his jurisdiction because one of the vehicles may have been seen.
>
> So he goes out there, nothing there, and then someone comes along, says – well, gives him some information the vehicle he wants may

---

his jurisdiction, and thus did not have the legal authority to make the stop. Counsel specifically made the analogy to the plain view situation, and whether an officer had a legal right to be where he was when he observed contraband or evidence in plain view. T.(S) 65.

be somewhere else, so he goes down there, to see if the vehicle is there. He goes away from his jurisdiction, doesn't, doesn't see anything.

He goes back to his jurisdiction, and sees a vehicle, a smashed-in grill, however you want to describe it, not having any headlights, and are we supposed to draw from the radical profiling, the facts that gave rise to, to the *Terry* case,[5] ah, that this is the same thing?

. . .

Okay. So you're, you're telling me that if, if a police officer gets what is arguably a valid call to go into a different jurisdiction to investigate, so see if there is something in that jurisdiction that may impact upon what happened in his jurisdiction, that he has to turn back around, if he doesn't see it, he has to turn back around and, ah, if he sees something then, it's okay?

But if he says, Hey, I'm just going to drive around the block, just going to go down to wherever, ah, other businesses are, where this place, where this car may have gone and stopped, whatever, that he can't do that, he has to just stop and go back? And if, if he –

. . .

---

[5] *Terry v. Ohio*, 392 U.S. 1 (1968).

> If he stops and goes back and then if he sees the vehicle, then he can stop it?
>
> But if he goes out and, as Mr. Burnworth and as mister, as the sergeant said, he does a sweep and then is going back to this jurisdiction, he can't stop this car?
>
> T.(S) 66-69 (footnote added).

Counsel for Skropits argued that the officer did not have reasonable articulable facts that justified continuing the investigation outside of the East Canton jurisdiction, characterizing the officers search for one of the vehicles involved in the hit-skip accident as "a wild goose chase."[6]

The trial court rejected this characterization of the officer's investigation and overruled the suppression motions. In so doing, the court found that the officer reasonably pursued his investigation into the hit-skip accident into nearby areas that were just outside of his jurisdiction, and then reasonably stopped the suspected vehicle when he was on his way back to his jurisdiction.

> What I'm looking at is that was a logical thing for a police officer to do, as part of his investigation. He had an investigation, he had an incident that occurred within his jurisdiction. He went there, ah, obviously because of the road debris, he, there had been something which had occurred.

---

[6] T.(S) 69-70.

> Going back to city hall, was told, was dispatched to go outside of his jurisdiction in continuation of what had happened – his investigation of what had happened in his jurisdiction.
>
> Goes out there, doesn't see anything, gets some additional information, takes a final step in the, in his investigation, does the sweep, and then on his way back to the, back to his jurisdiction, he sees a vehicle, ah, which matches what had happened, ah, in his jurisdiction. Has a smashed in grill, it was driving after dark without headlights and he stopped it.
>
> Just giving you my findings of fact and my conclusion of law, is that on the basis of that, ah, stopping that vehicle was not a violation of the constitutional rights of either Mr. Skropits or Mr. Jones. And I'm denying the motion to dismiss.
>
> T.(S) 71-72.

After the suppression motions were overruled, Skropits opted to plead no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the court found both Jones and Skropits guilty of the charged offenses, and ordered a probation investigation report. Upon the completion of this report, the court imposed a community control sanction for a period of two years.

Jones and Skropits both appealed their convictions and sentences to the Court of Appeals for

Stark County (Fifth Appellate District), challenging solely the trial court's suppression ruling. The court of appeals sustained their lone assignments of error and reversed the trial court, concluding that it had erred in not sustaining their suppression motions. In so ruling, the appellate court held that the extra-territorial stop by the officer in this case violated the reasonableness requirement of the Fourth Amendment, and hence invalidated the stop and subsequent search of the motor vehicle.[7]

Judge Julie A. Edwards dissented in both cases. Judge Edwards reasoned that this Court's *Weideman* decision[8] was controlling in these cases. Pursuant to this case, Judge Edwards would have held that the stop in this case was not unreasonable since the police officer observed a traffic violation being committed by the vehicle driven by Jones and Skropits, i.e., driving at night without its headlights on, and thus the trial court did not err in overruling the suppression motions.

The State of Ohio appealed these two cases to the Ohio Supreme Court, which accepted the cases for

---

[7] *State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206; *State v. Skropits*, Stark App. No. 2007-CA-00098, 2007-Ohio-5817, 2007 WL 3171209.

[8] *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002).

review[9] and ordered them consolidated.[10] The supreme court reversed the decision of the court of appeals, and held that the trial court did not err in overruling the suppression motions. The supreme court, in relying on its precedents as well as this Court's *Virginia v. Moore* decision, held that a police officer who personally observes a traffic violation outside of his territorial jurisdiction has probable cause to make a traffic stop, and such a stop is thus not unreasonable under the Fourth Amendment.[11] It is from this decision that Skropits now files the instant petition for writ of certiorari from this Court.

The facts of this case are not complicated. On September 27, 2006, Officer Mitchell Hershberger of the East Canton Police Department was dispatched to an accident scene to investigate the collision of two motor vehicles. When he arrived at the location of the accident – 113 East Nassau Street in East Canton – neither vehicle was still at the scene. Hershberger talked with a witness who worked at the nearby gas station, and was told that a small red Ford Ranger had struck the rear end of a full-size van. The driver of the van got out and exchanged words with the

---

[9] *State v. Jones*, 117 Ohio St.3d 1438, 883 N.E.2d 456 (2008) (appeal allowed); and *State v. Skropits*, 117 Ohio St.3d 1423, 882 N.E.2d 444 (2008) (appeal allowed).

[10] *State v. Skropits*, 117 Ohio St.3d 1450, 883 N.E.2d 1075 (2008) (cases consolidated).

[11] *State v. Jones*, 121 Ohio St.3d 103, 902 N.E.2d 464 (2009), syllabus.

driver of the Ford Ranger. The driver of the van then got back into his vehicle, made a U-turn, and left the scene. The Ford Ranger also left the scene, proceeding westbound on Nassau Street.[12]

Hershberger next examined the accident site, and noticed debris from the Ford Ranger on the street. He specifically found debris of the front turn signal light from the Ranger. The officer cleared the street of this debris, which took about five minutes, and then proceeded to the town's village hall (as he was also the bailiff for mayor's court that night). The village hall was about 30 yards from the accident scene. As he was exiting his cruiser, Hershberger received a dispatch call that a red Ford Ranger with a smashed front and headlights out was hiding at the Old Coyote restaurant, which was located on the Osnaburg Township – Canton Township boundary line. The restaurant was about a half mile from East Canton. Hershberger knew that there was a trailer park there.[13]

Hershberger investigated the old restaurant area and the trailer park,[14] but did not find the red Ford Ranger. Thinking that the vehicle might be going to

---

[12] T.(S) 8-10, 21, 42-43.

[13] T.(S) 11-13, 22-25, 26, 38, 42.

[14] The Coyote was not in the East Canton jurisdiction, but was just across the line in Canton Township. The trailer court was east of the old restaurant, in Osnaburg Township, between the city limits of East Canton and Canton Township. T.(S) 26-27.

the City of Canton, Hershberger opted to continue west of Nassau Street (which turned into Lincoln Street) to Trump Road, which was about a half mile from his location. At the intersection of Trump Road and State Route 172, there is a McDonald's restaurant and a Speedway, as well as a drive-through, a motel, and a car wash. As Hershberger pulled into the parking lot of this area, a pickup truck approached him. Hershberger estimated that it took him about two minutes to get here from the village hall. The men in this pickup truck told the officer that a motor vehicle with no headlights on almost hit them, and that this vehicle was coming westbound. Hershberger immediately proceeded eastbound on State Route 172, heading back to East Canton, when he saw the red Ford Ranger without its headlights on and its front end smashed. The officer turned around and followed the Ranger, eventually turning on his lights to make a traffic stop.[15]

The traffic stop occurred about 1¼ miles from the East Canton accident site. Hershberger noted that the red Ford Ranger fit the description of the vehicle that rear-ended the van in East Canton. Hershberger pulled the vehicle over for driving without its headlights on, for leaving the scene of an accident, and for littering the roadway with injurious material. Given the information that the gas station clerk who had witnessed the accident had given him,

---

[15] T.(S) 13-16, 25.

Hershberger felt that the drivers did not take the time to exchange insurance information but had simply left the scene after exchanging words.[16] Hershberger felt that while he was not in hot pursuit of a driver who had fled this accident scene, he was nonetheless in fresh pursuit. And he pulled over the Ranger for driving without its headlights on, he asked the dispatcher to contact the Ohio Highway Patrol to come to the scene, but was told that they were not available.[17]

ARGUMENT

Skropits argues the Ohio Supreme Court's ruling that the extraterritorial traffic stop of a motor vehicle based on probable cause – a traffic violation committed in the presence of the police officer – did not violate the Fourth Amendment and was an erroneous application of this Court's Fourth Amendment jurisprudence. The Ohio Supreme Court reached its conclusion based upon one of its earlier precedents – *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002) – as well as this Court's 2008 decision of *Virginia v. Moore*, ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008). Skropits curiously does not cite or

[16] This clerk had mimicked the driver of the van in telling Hershberger about the accident, and the driver appeared to be animated when talking with the driver of the Ford Ranger. T.(S) 41.

[17] T.(S) 19, 20, 29, 40-41, 42-45.

otherwise refer to either of these two decisions in arguing that the Ohio Supreme Court's ruling in this case violated the Fourth Amendment's prescriptions. As a result, Skropits' argument and petition are seriously flawed and not only overlooks or ignores the crux of the Ohio Supreme Court's decision, but also overlooks or ignores this Court's recent *Moore* decision and its applicability to the legal issue in this case. As a result, this Court should deny the petition for writ of certiorari.

In the case below, the Ohio Supreme Court held that a law enforcement officer who personally observes a traffic violation, even if outside of his statutorily prescribed territorial jurisdiction, has probable cause to make the traffic stop in accordance with the principles of the Fourth Amendment. In so ruling, the supreme court relied upon its earlier precedent in *Weideman,* but also relied upon this Court's recent decision in *Virginia v. Moore.* The state supreme court specifically stated in its opinion, "Our decision in *Weideman* and the United States Supreme Court's recent decision in *Virginia v. Moore* [], are dispositive of this matter." *Jones,* 121 Ohio St.3d 103, 902 N.E.2d 464, at ¶ 11 (2009). Despite this clear statement by the Ohio Supreme Court in its decision, Skropits nonetheless ignores these two decisions and argues that the court erred in so ruling. Skropits does not even ask this Court to revisit its *Moore* decision and construct some argument challenging its validity, rationale, or logic. Absent such a challenge, this Court is left with a rather simple review of the

state supreme court's decision to determine whether it correctly followed *Moore*. Such a review would only reaffirm the principles set forth in *Moore* and not result in either a change in current Fourth Amendment jurisprudence or a reversal of the decision below.

In *Moore,* this Court held that a stop and arrest of a motorist in violation of state law did not trigger Fourth Amendment protections as long as that stop and arrest were based upon probable cause. This Court explained that "when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." *Moore,* ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559. While states are free to legislate higher standards for searches and seizures, as well as provide for the exclusionary-rule remedy for such violations, those laws do not alter the requirements of the Fourth Amendment. *Moore,* ___ U.S. at ___, 128 S.Ct. at 1606, 170 L.Ed.2d 559. Thus, since the stop and arrest in *Moore* was supported by probable cause, it did not run afoul of the Fourth Amendment even though it violated state law. Skropits does not dispute or challenge this holding.

The Ohio Supreme Court simply followed this holding in *Moore* in ruling that an extraterritorial stop and arrest of a motorist that violated state law did not run afoul of the Fourth Amendment since the stop and arrest were supported by probable cause. In the instant case, Officer Hershberger had probable

cause to stop the red Ford Ranger. While searching for one of the vehicles in a hit-skip accident – and specifically for the red Ford Ranger that had apparently rear-ended into a van Officer Hershberger was approached by the occupants of a pickup truck who alerted him to a vehicle that had just almost run into them and was driving without its headlights on. The vehicle was coming westbound towards them, so Hershberger proceeded on State Route 172 towards East Canton and the reported vehicle. Shortly afterwards, Hershberger saw the vehicle – a red Ford Ranger without its headlights on and with a smashed front – pass him. He immediately turned around and made the traffic stop for driving in the dark without its headlights on. Hershberger personally observed this traffic violation and therefore had probable cause to make the traffic stop.[18]

In addition, Hershberger had probable cause to believe that this red Ford Ranger was the one involved in the earlier hit-skip accident in East Canton. Hershberger immediately responded to the call that an accident had occurred, but did not find the vehicles there. After talking to a witness to the accident, the officer spent about five minutes cleaning

---

[18] See R.C. 4513.03 (requiring lights on motor vehicles between sunset and sunrise and whenever there is insufficient light to see 1,000 feet ahead); R.C. 4513.04 (all motor vehicles must be equipped with at least two operable headlights); R.C. 4513.14 (two headlights must be displayed during the times prescribed in R.C. 4513.03); R.C. 4513.15 (headlight illumination required).

the roadway of the debris left from the accident – debris from the front headlights of the red Ford Ranger identified by the witness. Hershberger then proceeded to the village hall, located about 30 yards from the accident site, when he received another dispatch call relative to the Ranger. He immediately proceeded to the Old Coyote restaurant, located about a half mile from East Canton, where he looked for the vehicle there and at the nearby trailer park. Not finding the Ranger, Hershberger opted to continue westbound for another half mile to the intersection of State Route 172 and Trump Road. While in a parking lot at this intersection, Hershberger was confronted by the occupants in the pickup truck about a vehicle driving without its headlights, despite it being dark outside, and had almost collided with the pickup truck. Hershberger immediately left the parking lot, going east towards East Canton, and passed the red Ford Ranger without its headlights on and its front smashed in. Given the closeness in time and location, Hershberger had probable cause to believe that this red Ford Ranger was the one that had shortly before rear-ended a van in East Canton and left the scene westbound.

The Ohio Supreme Court's *Weideman* decision was also in accordance with Moore's Fourth Amendment prescription. In that decision, the state supreme court held that extraterritorial traffic stops, if supported by probable cause based upon a police officer observing a traffic violation, are not unreasonable per se under the Fourth Amendment.

> Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable per se under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop.

Weideman, supra, at syllabus.

Both *Weideman* and the decision below are in accordance with the clear, bright-line principles this Court set forth and reaffirmed just last year. Skropits does not challenge this Court's *Moore* decision – either its holding or its rationale. He is in essence asking this Court to reverse the Ohio Supreme Court below without confronting head-on its *Moore* decision. Such a task is seriously flawed since the supreme court below simply applied *Moore*'s uncomplicated holding to the state statute in question to the uncontested facts of this case.

CONCLUSION

For this reason, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

JOHN D. FERRERO,
Prosecuting Attorney,
Start County, Ohio

RONALD MARK CALDWELL*
Assistant Prosecuting Attorney
110 Central Plaza, South
Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

**Counsel of Record*

Counsel for Respondent